

Appl. No.: 10/565,690

Amdt. Dated March 14, 2007

Response to Office Action Mailed December 28, 2006

REMARKS:

In the first Office Action, mailed December 28, 2006, the Examiner has objected to the form of specific phrases or elements in claims 1, 6, 7, and 9 and so has rejected all the claims under 35 USC §112. Claims 1-6, 9, and 11-15 are rejected as anticipated by Sanders '399 patent; claims 7 and 16-18 as obvious on Sanders in view of the Kane publication '492; claims 8 and 19-20 on Sanders in view of Cooley '925; and claim 10 as obvious in view of Sanders alone.

By this Response, claims 1-20 currently pending have been amended to improve their forms without substantial narrowing of their claimed subject matter. The claims are distinguished from the cited prior art, which is directed to different problems than the present invention and so have different structures that do not anticipate or make obvious the claimed matter of the present invention.

The present invention is directed to a flexible shipping container with a secure, double tape seal, for containing hazardous biologic and other materials to be shipped by air and which must meet strict IATA regulations. Sanders '399 is directed to a reusable, re-sealable pouch having only a single seal over a slit 17; no suggestion as to meeting IATA requirements is offered. Kane similarly shows a recloseable consumer food package adapted for forming, filling, and sealing at high speeds in production lines. Cooley '925 discloses an authenticating and tamper-evident label involving opaque layers that turn transparent upon tampering. None of the references, singly or together, makes the claimed invention non-novel or obvious.

In the present invention, a package is provided having a slot 18 for insertion of a hazardous item such as a vial of biologic fluid, a tissue specimen, or the like, spillage of which would be dangerous to an aircraft and its crew and to baggage or freight handlers. A portion 20 of a double-sided adhesive strip 10 is pre-affixed on one of its sides 12 to the outer wall 2, 9 of the package adjacent the slot 18, with protective film 15 covering the balance of that side of the strip (Fig. 2). After the product is inserted, the protective film 15 is removed from the wall-side of the strip 10 and that one side 14 is pressed onto the outer wall 9, 23 of the package and across the slot 18, sealing the product into the package. Then the protective film 17 on the other side of the strip 10 is removed and the top 4 of the package is folded over at the slot 5, so that the adhesive strip 10 is bent back onto itself with the end 13 of the strip also adhering to the wall 2, 9 of the package below the other end 20 of the strip. This forms the double seal that is used to implement packaging in a novel, unobvious, and most useful way to comply with the IATA specifications; indeed the packaging according to this disclosure has now successfully passed the IATA certification tests.

Rejections of Claims 1-6, 9, and 11-15 on Sanders '399 patent, 35 USC §102(b)

The Sanders '399 patent does not form a double seal, contrary to the Examiner's statements to the contrary in paragraph 2. Sanders provides a re-useable tape seal with a finger tab at 23 for reopening the adhesive joint, in contrast to the permanent, double seal of the present invention. As the Sanders text describes, at col. 4 lines 1-46

The front panel 14 is provided with a slit 17 extending substantially parallel to the upper and lower folds 11, 12 and being located in a direction from one to the other of the side welds 13 nearer the upper fold 11 than the lower fold 12. The front panel 14 has an outer surface 18 to which is applied an adhesive coating 19 of a pressure sensitive contact adhesive tape 20, the adhesive bridging the slit 17 and extending longitudinally thereof throughout the whole length of the slit 17 from one to the other of the side welds 13. The tape 20 comprises a substrate 21 having a surface 22 that carries the adhesive coating 19. The adhesive 19 extends on the surface 22 for the full length of the substrate 21 and in a direction transversely of the substrate from one marginal edge thereof to a location spaced transversely

inwardly from an opposite marginal edge thereof to provide a finger tab 23 extending longitudinally of the tape 20.

The container 10 is opened by grasping the finger tab 23 and pulling the tab away from an adjacent surface of the front panel 14. The action of turning the tab 23 away from the front panel 14 causes *the substrate 21 to peel from the adhesive 19 in a direction towards the lower fold 12 the peeling action continuing as far as the slit 17 when the adhesive coating 19 separates into two portions, an upper portion having been separated from the substrate 21 and remaining on the outer surface 18 of the front panel 14 and a lower portion continuing to unite the substrate 21 and the portion of the front panel 14 below the slit 17.* The division of the adhesive coating 19 results from the reaction of the upper surface 18 of the front panel 14 above the slit 17 to the force applied to the finger tab 23 no longer being present once the action of peeling the tape 20 in a direction from the upper fold 11 towards the lower fold 12 coincides with the slit 17. In consequence, the adhesive 19 is split, as shown in FIG. 2, and the continuing force applied to the finger tab 23 results in the portion of the front panel 14 below the slit 17 being pulled away from the rear panel 15 thereby effecting opening of the container 10 at the slit 17.

The container 10 is re-closed by releasing the force applied to the finger tab 23 and re-uniting the surface 22 of the substrate 21 with the portion of the adhesive 19 remaining on the outer surface 18 of the front panel 14 above the slit 17, this being possible due to the "re-usable" characteristics of the adhesive 19 whereby the container 10 can be opened and re-closed and repeatedly re-opened and re-closed.

(italics added) No suggestion or teaching appears in this part of Sanders that the upper surface of the sealing tape 21 in Figs. 1-2 has adhesive thereon, as is required in the present invention.

Figures 12-13 of Sanders do show a double-sided tape 50, with silicone release paper 52 on the upper side thereof in Fig. 12 (see col. 7, ll. 4-42). The tape 50 then adheres to itself across the slit 17 as is required in the present invention, but this comprises only a single seal across the slit 17 as in Figure 12, not the double seal (at 12, 22 of application Fig. 4) required by the present invention to meet IATA regulations.

The Examiner's citation of Sanders' strip 21, in Fig. 1, as a "detachable protective strip" like the protective strip 17 of the present invention, Fig. 1, is incorrect. As shown in the italicized portion above, the adhesive 19 of Sanders is part of adhesive tape 21, with adhesive only

on the under-surface 22 of the tape or strip 21; adhesive 19 however adheres more strongly to the surface 18 of the package than to the surface 22 of the strip 21, so as the strip 21 is peeled to open the slit 17, the rightward portion of the adhesive in Fig. 2 of Sanders remains attached to the wall 18, while the leftward portion remains attached to both the strip 21 and the wall 18 leftward of the slit 17. There is no adhesive on top of the strip 21, so folding the strip back on itself at the slit 17, as is done in Fig. 4 of the present invention disclosure (at slot 5), would not result in a double seal as is required by the present invention. There is no protective strip as 15 of the present invention shown or suggested in Sanders, on a lower surface of adhesive 19, to keep the slit 17 of Sanders open for insertion of product. Thus, there is nothing in Sanders corresponding to the larger protective strip 17 of Fig. 1 and claim 1 of the present application, nor to a detachable protective strip below adhesive 19 rightwardly of the slit 17 in Sanders as claimed, and further there is nothing in Sanders corresponding to the adhesive surfaces 16, 21 of the adhesive strip 10 as defined in claim 1 of this application. Claim 1 is allowable over Sanders since these several fundamental elements are not shown in nor suggested by Sanders, alone or in combination with the other art cited.

The Examiner's citation, in rejecting independent claim 9 of the application as anticipated by Sanders, of the analysis shown above in regard to claim 1 as faulty, is equally unavailing to show anticipation here. Further, there is no "protective strip covering the second zone of the self-adhesive strip", as shown above, and no protective strip exists to be removed from the first or outer face of the adhesive strip, as the Examiner asserts with incorrect citations. Citation to Col. 7, ll. 4-22 is inapposite to this rejection, as that text of Sanders refers to Figs. 10 and 11, which have nothing to do with Figs. 1-2 of Sanders; thus, this argument of the Examiner is not understood. Picking out unrelated bits and pieces of a reference to try to show anticipation is improper.

The rejections of independent claims 1 and 9 of the application as anticipated by Sanders '399 patent are unwarranted. These rejections should be reconsidered and withdrawn, together with the similar rejections of claims 2-6 and 11-15 dependent from them.

Rejections of Claims 7 and 16-18 on Sanders '399 in view of Kane appl'n

Claims 7 and 16-18 of the present application claim oriented polyamide in an outer layer and polyethylene in an inner layer of the package of application claim 1. Since claim 1 is allowable, as demonstrated above, these claims are also allowable as incorporating the novel structure defined there.

These claims also are independently patentably non-obvious over the combination of art applied in paragraph 3 of the action. Although Kane does disclose each of oriented polyamide in an outer layer of an envelope and various specific polyethylenes in an inner layer, such "menu" disclosure, even in related-art patents, is frowned upon. *Medtronic Navigation v. Brainlab*, Fed. Cir. (06-1289) (non-precedential), Kane and Sanders together do not suggest use of such materials in the structure defined in these claims of the present application, for providing a secure, IATA-approvable secondary packaging that is leakproof under air transport conditions.

Rejections of Claims 8 and 19-20 on Sanders '399 in view of Cooley '925

Claims 8 and 19-20 recite that the adhesive strip used to double-seal the envelope comprises at least one sheet of synthetic olefin polymer covered on two sides with a rubber-based adhesive. Since claim 1 is allowable, as demonstrated above, these claims are also allowable as incorporating the novel structure defined there.

These claims also are independently patentably non-obvious over the combination of art applied in paragraph 4 of the action. Although Cooley does disclose each of synthetic olefin polymer and rubber-based adhesive in the text cited, such "menu" disclosure in unrelated art (Cooley discloses tamper-evident seals, not recloseable seals as does Sanders) is frowned upon. *Medtronic Navigation v. Brainlab*, Fed. Cir. (06-1289) (non-precedential), Cooley and Sanders together do not suggest use of such materials in the structure defined in these claims of

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the present application, for providing a secure, IATA-approvable secondary packaging that is leakproof under air transport conditions.

Rejection of Claim 10 on Sanders '399

Claim 10 requires that the packaging of claim 1 not lose product to the outside of the envelope, as is required for IATA, at a range of pressure and temperatures, in the shipping of hazardous materials aboard aircraft. Neither Sanders nor any of the other art cited provides the double-sealing of the present invention, either over the normal range of pressures and temperatures to be encountered or otherwise.

CONCLUSION

The art cited does not anticipate or render obvious the combinations of elements and functions recited in any of claims 1-20 of the present application. Sanders '399 lacks the "double-sticky" tape and protective covers arranged with the package or envelope as in the disclosure and claims, and the other art cited does not make up for that shortfall. Each and all of claims 1-20 should be reconsidered and now allowed for issuance. Favorable reconsideration is earnestly requested. If any matters may be resolved in a telephone conference, the Examiner is requested to telephone undersigned counsel for applicant.

Deposit Account Charge Authorization and Extension Request. The Commissioner is hereby authorized to charge any fees associated with this communication to our Deposit Account No. 50-0305, including any required fees for any required extension of time under 37 CFR §1.136, which is hereby requested.

Respectfully submitted,

By: 

John R. Crossan, Reg. No. 27,433

Date: March 14, 2007

Attorneys for Applicant:

John R. Crossan

Jane S. Berman

CHAPMAN AND CUTLER LLP

111 West Monroe Street, 17th Floor

Chicago, Illinois 60603-4080

Telephone: 312-845-3420

Telefax: 312-803-5299

crossan@chapman.com

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Attorney Docket Number: 1717214
App. Serial No.: 10/565,690
Date of Facsimile Transmission: March 14, 2007
Transmitted to Facsimile No.: 1-571-273-8300

I hereby certify that the attached correspondence, namely: Response to Office Action, is being transmitted by facsimile on the date listed above, to the U.S. Patent Office at the facsimile number listed above, under 37 C.F.R. § 1.8.

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